



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं० 66] नई दिल्ली, बुधवार, सितम्बर 1, 1976/भाद्र 10, 1898
No. 66] NEW DELHI, WEDNESDAY, SEPTEMBER 1, 1976/BHADRA 10, 1898

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on 1st September, 1976:—

BILL No. 89 OF 1976

A Bill to provide for the establishment of a Corporation for the purpose of producing, manufacturing, acquiring, distributing and selling milk and milk products in the Union territory of Delhi and other areas so that wholesome milk and milk products may be available to the general public, at a reasonable price, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Delhi Milk Corporation Act, 1976.

(2) It extends to the whole of the Union territory of Delhi and also to the States of Haryana, Madhya Pradesh, Punjab, Rajasthan and Uttar Pradesh.

(3) It shall come into force in a State or Union territory to which it extends on such date or dates as the Central Government may, by notification, appoint and different dates may be appointed for the Union territory of Delhi or for different States or parts thereof or for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as reference to the coming into force of that provision in the Union territory of Delhi or the concerned State or part thereof.

Short title,
extent and
commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Board" means the Board of Directors referred to in sub-section (1) of section 11;

(b) "Chairman" means the Chairman of the Board;

(c) "Corporation" means the Delhi Milk Corporation established under section 3;

(d) "Delhi Milk Scheme" means the scheme made by the *ad hoc* Milk Board constituted by the resolution of the Government of India in the then Ministry of Food and Agriculture, No. 27-74/56-L.S., dated the 17th August, 1956 (published at page 283, Part I, Section 1 of the Gazette of India of the 25th August, 1956) for ensuring an adequate supply of milk and milk products of good quality in Delhi at a reasonable price;

(e) "member" means the member of the Board and includes the Chairman thereof;

(f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934, and includes a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

2 of 1934.

5 of 1970.

(i) "year" means the financial year.

CHAPTER II

DELHI MILK CORPORATION

Establish-
ment of
Delhi
Milk Cor-
poration.

3. (1) With effect from such date as the Central Government may, by notification, specify in this behalf, there shall be established, for the purposes of this Act, a Corporation, to be known as the Delhi Milk Corporation.

(2) The Corporation shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by that name sue and be sued.

Head office,
offices and
agencies.

4. (1) The head office of the Corporation shall be at New Delhi or at such other place as the Central Government may, by notification, specify.

(2) The Corporation may establish offices or agencies at other places in or outside the Union territory of Delhi.

5. (1) The authorised capital of the Corporation shall be such sum, not exceeding rupees twenty-five crores as may be fixed by the Central Government in this behalf, but it shall, in no case, be less than rupees four crores and the capital so fixed shall be provided to the Corporation by the Central Government from time to time after due appropriation made by Parliament by law for the purpose and subject to such terms and conditions as may be determined by that Government.

Capital of
the Cor-
poration.

(2) All non-recurring expenditure incurred by the Central Government for, or in connection with, the Delhi Milk Scheme up to the date of establishment of the Corporation, and declared by that Government to be capital expenditure, shall be treated as a part of the capital to be provided by the Central Government to the Corporation under sub-section (1).

(3) The capital of the Corporation shall be divided into such number of fully paid-up shares as the Central Government may specify in this behalf and all such shares shall stand vested in, and allotted to, the Central Government.

(4) The Central Government may provide, by way of loan, grant, subsidy or otherwise, any further amount that may be required by the Corporation for carrying on the business of the Corporation or for any purpose connected therewith on such terms and conditions as the Central Government may determine.

(5) The Central Government may reimburse to the Corporation such losses as may be incurred by it on any activity undertaken by it in pursuance of any direction made by that Government.

6. (1) The Corporation may, for the purpose of carrying out its functions under this Act, take advances against stocks of milk or milk products held by it, or borrow money, from—

Power of
Corpora-
tion to
borrow
money.

(a) any scheduled bank; or

(b) any other bank, banking institution or any other institution approved by the Central Government in this behalf.

(2) The Central Government may guarantee the advances taken or monies borrowed by the Corporation under sub-section (1), as to the repayment of principal and the payment of interest thereon and other incidental charges.

7. (1) All assets owned or acquired by the Central Government for the purposes of the Delhi Milk Scheme before the establishment of the Corporation shall, on such establishment, stand transferred to, and shall vest in, the Corporation.

Vesting of
properties
in Cor-
poration.

(2) For the purposes of sub-section (1), assets acquired by the Central Government for the purposes of the Delhi Milk Scheme shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments, book debts and all other rights and interests in or arising out of, such property as were, immediately before the establishment of the Corporation, in the ownership, possession, power or control of the Central Government for the purposes of the Delhi Milk Scheme, and

all books of account, registers, records and all other documents of whatever nature relating thereto, and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the Central Government in relation to the Delhi Milk Scheme.

(3) If any question arises as to whether any assets were owned, possessed, held or controlled by the Central Government for the purposes of the Delhi Milk Scheme, or whether any right, power, authority, privilege, obligation or liability was acquired or incurred by the Central Government for the purposes of the Delhi Milk Scheme, the same shall be decided by the Central Government.

Substitution of Corporation in suits or proceedings.

8. If, on the date of establishment of the Corporation, any suit, appeal or other proceeding of whatever nature, is pending by or against the Central Government for, or in connection with, the Delhi Milk Scheme, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Corporation of the assets or liabilities relating to the Delhi Milk Scheme, and the Corporation shall, in every such suit, appeal or proceeding, become substituted in place of the Central Government and after such substitution, the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Corporation, and not against the Central Government.

CHAPTER III

POWERS AND BUSINESS OF THE CORPORATION

Powers and business of the Corporation.

9. (1) It shall be the duty of the Corporation to carry on all or any of the following business, namely, acquisition, distribution, manufacture, movement, production, sale, storage, supply or transport of milk or milk products, or both.

(2) In particular, and without prejudice to the generality of the foregoing power, the Corporation shall have power to—

(a) ensure an adequate supply of wholesome milk and milk products at a reasonable price;

(b) promote and encourage, by such means as it may think fit, the production, manufacture or supply of milk and milk products;

(c) ensure, by such means as it may think fit, that the milk or milk products sold or supplied by it conforms to the standards of purity laid down by or under any law for the time being in force;

(d) fix the prices at which milk or milk products may be purchased or sold by it or by its branches or agencies;

(e) fix commissions, salaries or other remuneration payable to the persons employed by it;

(f) acquire milk or milk products from such sources as it may think fit;

(g) enter into and perform all such contracts as are calculated to further the efficient performance of its obligations under this Act;

(h) set up, or assist in the setting up of, any industry for handling and processing milk or milk products or for the manufacture of any milk products;

(i) perform any functions as agent or contractor in relation to any milk or milk products distributed or sold by any other person;

(j) provide for the preservation, storage and transport of milk acquired by it from the different collecting centres;

(k) sanction, without prior reference to the Central Government, capital expenditure of a sum not exceeding rupees twenty-five lakhs;

(l) discharge such other functions as may be prescribed or as are supplemental, incidental or consequential to any of the business specified in this Act.

10. (1) The Corporation may do anything which may be necessary or expedient for the purposes of carrying out its powers and business, under section 9.

General powers of Corporation.

(2) Without prejudice to the generality of the foregoing provisions, such power shall include the power,—

(i) to acquire, hold and dispose of property;

(ii) to invest its funds, which may not be, for the time being, required by it, in such shares, stocks, debentures or other securities as the Central Government may specify from time to time;

(iii) to aid in the establishment or promotion of any company, firm or other organisation having objects which are calculated to assist, whether directly or indirectly, in the achievement of the objects of the Corporation;

(iv) to administer or run any undertaking having objects similar to those of the Corporation, if the management of such undertaking is entrusted by the Central Government to the Corporation;

(v) to take over, or amalgamate with itself, by mutual consent, the whole or any part of the undertaking of any company, firm or other organisation having objects similar to those of the Corporation.

CHAPTER IV

MANAGEMENT

11. (1) The general superintendence, direction and management of the affairs and business of the Corporation shall vest in a Board of directors, which may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation under this Act.

Management of affairs and business of Corporation.

(2) In discharging its functions, the Board shall act on business principles having regard to the interests of the Corporation and the consumer and shall be guided by such instructions on questions of policy as may be given to it by the Central Government.

12. (1) The Board shall consist of the following, namely:—

The Board.

(a) a Chairman;

(b) two members to represent the Ministry of the Central Government dealing with Animal Husbandry and Dairying;

(c) one member to represent the Ministry of the Central Government dealing with Finance;

(d) two members, to be nominated by the Central Government to represent the Union territory of Delhi or such of the States to which this Act extends or in which this Act has come into force;

(e) one member to represent any of the national institutions dealing with dairying;

(f) two members to represent the interests of producers and co-operative organisations engaged in the production, supply or procurement of milk for the Corporation;

(g) not more than two members, to be nominated by the Central Government, to represent any other interest which may be necessary to represent for furthering the objects of the Corporation;

(h) one Managing Director, who may also hold office as the Chairman.

(2) All the members of the Board shall be appointed by the Central Government and shall hold office during the pleasure of that Government.

(3) The Managing Director shall—

(a) exercise such powers and perform such duties as the Board may entrust or delegate to him;

(b) receive such salary and allowances and be governed by such terms and conditions of service, as the Board may with the previous approval of the Central Government, determine:

Provided that the first Managing Director, shall receive such salary and allowances as the Central Government may fix.

Members to receive remuneration, etc. 13. The members, other than the Managing Director, shall be entitled to receive, by way of remuneration or fees, such sums as may be prescribed:

Provided that no member who is an officer of Government shall be entitled to receive any remuneration other than any allowance admissible to him under the rules regulating his conditions of service.

Filling up of casual vacancies. 14. Subject to the provisions of sub-section (1) of section 12, the manner of filling casual vacancies among the members shall be such as may be prescribed.

Resignation of members. 15. A member may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.

Meetings. 16. (1) The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at meetings) as may be provided by regulations made by the Corporation under this Act.

(2) The Chairman or, if for any reason he is unable to attend any meeting, any other member elected by the members present at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence the person presiding, shall have a second or casting vote.

17. A member who has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and the disclosure shall be recorded in the minutes of the meeting of the Board and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

Members
not to
vote in
certain
cases.

18. No act or proceeding of the Board shall be invalid merely by reason of the existence of any vacancy in, or any defect in the constitution of, the Board.

Vacancies,
etc., not to
invalidate
proceed-
ings of
Board.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

19. (1) The Corporation shall have its own funds and all receipts of the Corporation shall be credited thereto and all payments of the Corporation shall be made therefrom.

Funds of
Corpora-
tion.

(2) Such funds shall be applied for meeting all administrative expenses of the Corporation and for carrying out the provisions of this Act.

20. The Corporation shall cause its books to be closed and balanced on the 31st day of March, of each year.

Closure of
accounts.

21. (1) The Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and the balance sheet in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Accounts
and audit.

(2) The accounts of the Corporation shall be audited annually by the Comptroller and Auditor-General of India or any person appointed by him in this behalf and any expenditure incurred by him in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect all or any of the offices of the Corporation.

(4) The accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

Surplus
profits.

22. (1) After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and all other matters for which provision is necessary under any law, or which are usually provided for by the companies under the Companies Act, 1956, the Corporation shall transfer the balance of its profits to a reserve fund to be established by it.

1 of 1956.

(2) The reserve fund to be established under sub-section (1) shall be utilised solely for such purposes as the Board may by regulation specify.

CHAPTER VI

TRANSFER OF EMPLOYEES TO THE CORPORATION

Special
provision
for trans-
fer of em-
ployees to
Constitu-
tion.

23. (1) On the establishment of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any person employed by that Government for the purposes of the Delhi Milk Scheme:

Provided that no order under this sub-section shall be made in relation to any person employed by the Central Government for the purposes of the Delhi Milk Scheme, who has, in respect of the proposal of the Central Government to transfer him to the Corporation, intimated, within such time as may be specified in this behalf by that Government, his intention of not becoming an employee of the Corporation:

Provided further that such of the persons employed by the Central Government for the purposes of the Delhi Milk Scheme who do not express, within the specified time, their intention of becoming the employees of the Corporation, shall be dealt with in the same manner and in accordance with the same rules as would apply to the employees of the Central Government in the event of the reduction of the strength of the establishment in which such persons have been employed.

(2) An officer or other employee transferred by an order made under sub-section (1) shall, on and from the date of transfer, cease to be an employee of the Central Government and become an officer or other employee of the Corporation with such designation as the Corporation may determine and shall, subject to the provisions of sub-sections (3), (4) and (5), be governed by the regulations made by the Corporation under this Act, as respects remuneration and other conditions of service including pension, leave and provident fund, and shall continue to be an officer or other employee of the Corporation unless and until his employment is duly terminated by the Corporation.

(3) Every officer or other employee transferred by an order made under sub-section (1), shall, within six months from the date of transfer, exercise his option in writing to be governed,—

(a) by the scale of pay applicable to the post held by him under the Central Government immediately before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred,

(b) by the leave, provident fund, retirement or other terminal benefits admissible to officers or other employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the officers or other employees of the Corporation under the regulations made by the Corporation under this Act,

and such option, once exercised shall be final:

Provided that the option exercised by an officer or other employee under clause (a) shall be applicable only in respect of the post to which such officer or employee is transferred to the Corporation and in the event of his appointment to a higher post under the Corporation, he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or other employee is officiating in a higher post under the Central Government either in a leave vacancy or in any other vacancy of a specified duration, his pay, on transfer, shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to draw, at his option, pay in the scale applicable to the post under the Central Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred:

Provided also that when an officer or other employee serving in the Department of the Ministry of the Central Government dealing with the Delhi Milk Scheme is promoted to officiate in a higher post in that Department subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Department before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

(4) No officer or other employee transferred by an order made under sub-section (1),—

(a) shall be dismissed or removed by an authority subordinate to that competent to make a similar or equivalent appointment under the Corporation as may be specified in the regulations made by the Corporation under this Act;

(b) shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charge against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making a representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

Provided that this clause shall not apply,

(i) where an officer or other employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the authority empowered to dismiss or remove an officer or other employee or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(iii) to an officer or other employee who, after transfer to the Corporation, is appointed to a higher post under the Corporation in response to an open advertisement and in competition with outsiders.

(5) If, in respect of any such officer or other employee as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in sub-section (4), the decision thereon of the authority empowered to dismiss or remove him or to reduce him in rank shall be final.

(6) Nothing contained in sub-section (1) shall apply to the members of the Central Secretariat Service or any other Service or to persons on deputation to the Department referred to in that sub-section or to any of its attached or subordinate offices from any Ministry of the Central Government or from any State Government or from any organisation.

(7) Where any undertaking or part thereof is amalgamated with the Corporation under section 10, the agreement for such amalgamation shall provide for the transfer to the Corporation of the persons employed in connection with such undertaking or part thereof and the terms and conditions of the employment of such persons in the Corporation.

CHAPTER VII

MISCELLANEOUS

Reference
to Delhi
Milk
Scheme.

24. Any reference to the Delhi Milk Scheme in any law, other than this Act, or in any contract or other instrument in force, or having effect immediately before the commencement of this Act, shall be construed, on the establishment of the Corporation, as a reference to the Corporation.

Declara-
tion of
fidelity
and
secrecy.

25. Every Chairman, member, auditor, officer or other employee of the Corporation, shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

Indemnity.

26. (1) Every member shall be indemnified by the Corporation against all losses and expenses incurred by him in, or in relation to, the discharge of his duties except such as have been caused by his own wilful act or default.

(2) A member shall not be responsible for any action taken or anything done by any other member or by any officer or other employee of the Corporation or for any loss or expense resulting to the Corporation from the insufficiency or deficiency of the value, or title to, any property or security acquired or taken on behalf of the Corporation in good faith, or by the insolvency or wrongful act of any person under obligation to the Corporation or by anything done in good faith, in the execution of the duties of his office or in relation thereto.

Protection
of action
taken in
good faith.

27. (1) No suit or other legal proceeding shall lie against the Central Government or the Corporation or any member, or any officer or other employee of the Corporation or any other person authorised by the Corporation to discharge any function under this Act, for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done under or in pursuance of this Act.

(2) No suit, prosecution or other legal proceeding shall lie against the Central Government or any person employed before such commencement in connection with the Delhi Milk Scheme for anything done, or omitted to be done, or for any liability incurred before the commencement of this Act, except with the approval of the Central Government.

45 of 1860. 28. Every member, auditor, officer or other employee of the Corporation shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Employees of the Corporation to be public servants.
Offences.

29. (1) Whoever, without the consent in writing of the Corporation, uses its name in any prospectus or advertisement, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing by an officer authorised in this behalf by the Corporation.

43 of 1961. 30. For the purposes of the Income-tax Act, 1961, or any other enactment for the time being in force relating to income-tax, super-tax or any other tax on income, profits or gains, the Corporation shall be deemed to be an Indian company and a company in which public are substantially interested and shall be liable to tax accordingly on its income, profits and gains.

Provision relating to income-tax, etc.

31. No provision of law relating to the winding up of companies or corporations shall apply to the Corporation and it shall not be placed in liquidation save by order of the Central Government and in such manner as that Government may direct.

Winding up of Corporation.

32. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may by order, do anything, not inconsistent with such provisions, for the purposes of removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiration of two years from the date of commencement of the said Act.

33. (1) The Corporation shall, as soon as possible after the end of each year, submit to the Central Government an annual report in such form as may be prescribed on the working and affairs of the Corporation.

Annual report.

(2) The Central Government shall, as soon as may be after the receipt of such report, cause such report to be laid before both Houses of Parliament.

34. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for—

(a) the term of office of the members and the manner of filling vacancies among the members of the Board;

(b) the remuneration or fees which the members, other than the Managing Director, shall be entitled to receive from the Corporation;

- (c) the form in which accounts may be kept;
- (d) the form in which the annual report may be prepared;
- (e) such other matters as may be, or are required to be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following, the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
make re-
gulations.

35. (1) The Corporation may, with the previous sanction of the Central Government, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for—

(a) the method of appointment, the conditions of service and the scales of pay of the officers and other employees of the Corporation;

(b) the duties and conduct of officers and employees of the Corporation and disciplinary control;

(c) the functions and duties which may be entrusted or delegated to the Managing Director;

(d) the times and places at which meetings of the Board shall be held and the procedure to be followed thereat;

(e) the purposes for which the amounts in the reserve fund may be utilised;

(f) generally, the efficient conduct of the affairs of the Corporation.

(3) The Central Government may, by notification, modify or rescind any regulation made or sanctioned by it and the regulation so modified or rescinded shall have effect only in such modified form or be of no effect as the case may be; so, however, that such modification or rescission shall be without prejudice to the validity of anything done under the regulation before its modification or rescission.

(4) The first regulations of the Corporation shall be made by the Central Government within three months from the establishment of the Corporation and the regulations so made shall have effect as if they had been made by the Corporation.

(5) The regulations made by the Central Government under sub-section (4), may be altered or rescinded by the Corporation.

THE SCHEDULE

(See section 25)

DECLARATION OF FIDELITY AND SECRECY

I, _____, do hereby declare that I will faithfully, truly and to the best of my judgement, skill and ability execute and perform the duties required of me as Chairman, member of the Board, auditor, officer or other employee (as the case may be) of the Delhi Milk Corporation and which properly relate to the office or position in the said Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the said Corporation or to the affairs of any person having dealing with the said Corporation; nor will I allow any such person to inspect or have access to, any books or documents belonging to, or in the possession, of the said Corporation and relating to the business of any person having dealing with the said Corporation.

STATEMENT OF OBJECTS AND REASONS

The Delhi Milk Scheme has been running as a departmental undertaking of the Ministry of Agriculture and Irrigation (Department of Agriculture) since its inception in 1959. Except for a short spell of two years (i.e. 1969-70 and 1970-71), when the Scheme earned a profit, the Delhi Milk Scheme has been incurring losses year after year. These losses are mainly due to the fact that Delhi Milk Scheme, with the present set up, is unable to take quick market decisions based on sound commercial principles and also cannot develop permanent links with the producers without assisting them in obtaining inputs and enhancing production. With a view to meeting the situation and to providing greater flexibility and autonomy in its day-to-day dealings and to liberating it from the departmental procedures financial as well as personnel management matters, it has been proposed to convert the Delhi Milk Scheme into a statutory Corporation. The Bill seeks to achieve the said object.

2. The functions of the Corporation will be mainly to ensure adequate supply of wholesome milk and milk products, conforming to the standards of purity laid down under any law for the time being in force, at a reasonable price. The Corporation is proposed to be empowered to borrow money from any scheduled bank or any other banking institution approved by the Central Government. Repayment of any money borrowed by the Corporation will be guaranteed by the Central Government.

3. The paid-up capital of the Corporation will be such sum, not less than rupees 4 crores, as the Central Government may determine. This sum will be equal to the value of the assets on the date of conversion of Delhi Milk Scheme into a statutory Corporation, which are estimated at rupees 3.25 crores. In addition, the Central Government may provide, by way of loan, a sum of Rs. 2 crores to serve as working capital for carrying on the business connected with the activities of the Corporation.

ANNASAHIB P. SHINDE.

NEW DELHI;
The 21st August, 1976.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 3-2/70-LD.I., dated the 28th August, 1976 from Shri Annasahib P. Shinde, Minister of State in the Ministry of Agriculture and Irrigation to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the Bill to provide for the establishment of a Corporation, for the purpose of acquiring, distributing and selling milk and milk products in the Union Territory of Delhi and other areas and for matters connected therewith or incidental thereto, recommends under article 117(1) and (3) of the Constitution of India read with article 274 thereof, the introduction of the Delhi Milk Corporation Bill, 1976, in Lok Sabha and also the consideration of the Bill by Lok Sabha.

FINANCIAL MEMORANDUM

The initial paid-up capital of the Delhi Milk Corporation shall be an amount not exceeding Rs. 25 crores as the Central Government may determine [clause 5(1) of the Bill]. This amount will be equal to the value of the assets on the date of conversion of Delhi Milk Scheme into a Statutory Corporation (estimated as Rs. 3.25 crores as on 20-3-1976). The Central Government may on that basis provide an equity of Rs. 4 crores as a paid-up capital. In addition, the Central Government may provide a sum of Rs. 2 crores by way of loan to enable the Corporation to carry on the business of the Corporation or any other matter connected therewith on such terms and conditions as the Central Government may determine.

2. All assets and non-recurring expenditure of capital nature incurred by the Central Government for or in connection with the Delhi Milk Scheme upto the actual date of the establishment of the Corporation shall be treated as a part of the paid-up capital provided by the Central Government to the Corporation [clause 5(2) and clauses 7(1) and 7(2) of the Bill].

3. The Central Government may also guarantee the advances taken or monies borrowed by the Corporation from any scheduled bank or any other bank or banking institutions approved by the Central Government as to the repayment of the principal and the payment of the interest thereon and other incidental charges [clause 6(2) of the Bill]. The ultimate liability arising out of such a guarantee cannot be estimated at this stage.

4. In as much as the Corporation is to take over completely the assets and liabilities of the Delhi Milk Scheme and consequently that of the Central Government on the date of its conversion into Corporation, no liability on this account will accrue to the Central Government (clause 7 of the Bill). Similarly, pay and allowances of the staff and pensionary and provident fund liability will also be borne by the Corporation, except in the case of those employees who do not opt to serve the Corporation in terms of the provisions contained in Chapter VI of the draft Bill. On the assumption that 90 per cent. of the staff would opt to come under the Corporation, the liability of the Central Government in respect of the remaining 10 per cent. of the staff will not exceed Rs. 90 lakhs being the capitalised value of the liability on account of pension and provident fund for their past services plus Rs. 18 lakhs per annum on account of their pay and allowances.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 34 of the Bill seeks to confer on the Central Government power to make rules for matters relating to the term of office and conditions of service of the members of the Board (other than the Managing Director) and the remuneration or fees to be paid to them and the functions of the Board.

2. Clause 35 of the Bill seeks to confer on the Corporation power to make, with the previous approval of the Central Government, regulations (not inconsistent with the provisions of the Bill and the rules made thereunder) to provide for method of appointment, conditions of service and scales of pay of the employees of the Corporation and functions and duties which may be delegated to the Managing Director.

3. Matters in respect of which power is conferred on the Central Government to make rules or on the Corporation to make regulations, relate to matters of detail and procedure. It is hardly practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 91 OF 1976

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Forty-fourth Amendment) Act, 1976.

Short
title
and com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. In the Preamble to the Constitution,—

Amend-
ment of
the
Preamble.

(a) for the words "SOVEREIGN DEMOCRATIC REPUBLIC", the words "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC" shall be substituted; and

(b) for the words "unity of the Nation", the words "unity and integrity of the Nation" shall be substituted.

3. After article 31 of the Constitution, the following sub-heading shall be inserted, namely:—

Insert-
tion of
new sub-
heading
after
article
31.

"Saving of Certain Laws",

Amendment of article 31C.

4. In article 31C of the Constitution, for the words, brackets, letters and figures "the principles specified in clause (b) or clause (c) of article 39", the words and figures "all or any of the principles laid down in Part IV" shall be substituted.

Insertion of new article 31D.

5. After article 31C of the Constitution and before the sub-heading "*Right to Constitutional Remedies*", the following article shall be inserted, namely:—

Saving of laws in respect of anti-national activities.

'31D. (1) Notwithstanding anything contained in article 13, no law providing for—

(a) the prevention or prohibition of anti-national activities;
or

(b) the prevention of formation of, or the prohibition of, anti-national associations,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, article 14, article 19 or article 31.

(2) Notwithstanding anything in this Constitution, Parliament shall have, and the Legislature of a State shall not have, power to make laws with respect to any of the matters referred to in sub-clause (a) or sub-clause (b) of clause (1).

(3) Any law with respect to any matter referred to in sub-clause (a) or sub-clause (b) of clause (1) which is in force immediately before the commencement of section 5 of the Constitution (Forty-fourth Amendment) Act, 1976, shall continue in force until altered or repealed or amended by Parliament.

(4) In this article,—

(a) "association" means an association of persons;

(b) "anti-national activity", in relation to an individual or association, means any action taken by such individual or association—

(i) which is intended, or which supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India or which incites any individual or association to bring about such cession or secession;

(ii) which disclaims, questions, threatens, disrupts or is intended to threaten or disrupt the sovereignty and integrity of India or the security of the State or the unity of the nation;

(iii) which is intended, or which is part of a scheme which is intended, to overthrow by force the Government as by law established;

(iv) which is intended, or which is part of a scheme which is intended, to create internal disturbance or the disruption of public services;

(v) which is intended, or which is part of a scheme which is intended, to threaten or disrupt harmony between

different religious, racial, language or regional groups or castes or communities;

(c) "anti-national association" means an association—

(i) which has for its object any anti-national activity;

(ii) which encourages or aids persons to undertake or engage in any anti-national activity;

(iii) the members whereof undertake or engage in any anti-national activity.'

6. After article 32 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 32A.

"32A. Notwithstanding anything in article 32, the Supreme Court shall not consider the constitutional validity of any State law in any proceedings under that article unless the constitutional validity of any Central law is also in issue in such proceedings."

Constitutional validity of State laws not to be considered in proceedings under article 32.

7. In article 39 of the Constitution, for clause (f), the following clause shall be substituted, namely:—

Amendment of article 39.

"(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

8. After article 39 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 39A.

"39A. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

Equal justice and free legal aid.

9. After article 43 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 43A.

"43A. The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry."

Participation of workers in management of industries.

Insertion of new article 48A.

Protection and improvement of environment and safeguarding of forests and wild life.

Insertion of new Part IVA.

10. After article 48 of the Constitution, the following article shall be inserted, namely:—

“48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”.

11. After Part IV of the Constitution, the following Part shall be inserted, namely:—

“PART IVA

FUNDAMENTAL DUTIES

Fundamental duties.

51A. It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.”.

Amendment of article 55.

12. In article 55 of the Constitution, for the *Explanation*, the following *Explanation* shall be substituted, namely:—

‘*Explanation*.—In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.'

13. In article 74 of the Constitution, for clause (1), the following clause shall be substituted, namely:—

Amend-
ment of
article
74.

"(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice."

14. In article 77 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

Amend-
ment of
article
77.

"(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of India."

15. In article 81 of the Constitution, to clause (3), the following proviso shall be added, namely:—

Amend-
ment of
article
81.

"Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census."

16. In article 82 of the Constitution, after the proviso, the following provisos shall be inserted, namely:—

Amend-
ment of
article
82.

"Provided further that such readjustment shall take effect from such date as the President may by order specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article."

17. (1) In article 83 of the Constitution, in clause (2), for the words "five years" in the two places where they occur, the words "six years" shall be substituted.

Amend-
ment of
article
83.

(2) The amendments made by sub-section (1) shall apply to the House of the People in existence on the date of coming into force of this section.

Amend-
ment of
article
100.

18. In article 100 of the Constitution, clauses (3) and (4) shall be omitted.

Amend-
ment of
article
102.

19. In article 102 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:—

“(a) if he holds any such office of profit under the Government of India or the Government of any State as is declared by Parliament by law to disqualify its holder;”.

Substitu-
tion of
new arti-
cle for
article
103.

20. For article 103 of the Constitution, the following article shall be substituted, namely:—

Decision
on ques-
tions as
to disquali-
fication.

“103. (1) If any question arises—

(a) as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, or

(b) as to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as, and for being, a member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification,

the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.”.

Amend-
ment of
article
105.

21. In article 105 of the Constitution, for clause (3), the following clause shall be substituted, namely:—

“(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House shall be such as may, from time to time, be evolved by such House of Parliament.”.

Amend-
ment of
article
118.

22. In article 118 of the Constitution, in clause (1), after the words “its procedure”, the brackets and words “(including the quorum to constitute a meeting of the House)” shall be inserted.

Insertion of
new arti-
cle 131A.
Exclusive
jurisdic-
tion of
the Sup-
reme
Court in
regard
to ques-
tions as
to Consti-
tutional
validity of
Central
laws.

23. After article 131 of the Constitution, the following article shall be inserted, namely:—

“131A. (1) Notwithstanding anything contained in any other provision of this Constitution, the Supreme Court shall, to the exclusion of any other court, have jurisdiction to determine all questions relating to the constitutional validity of any Central law.

(2) Where a High Court is satisfied—

(a) that a case pending before it or before a court subordinate to it involves questions as to the constitutional validity of any Central law or, as the case may be, of both Central and State laws; and

(b) that the determination of such questions is necessary for the disposal of the case,

the High Court shall refer the questions for the decision of the Supreme Court.

(3) Without prejudice to the provisions of clause (2), where, on an application made by the Attorney-General of India, the Supreme Court is satisfied,—

(a) that a case pending before a High Court or before a court subordinate to a High Court involves questions as to the constitutional validity of any Central law or, as the case may be, of both Central and State laws; and

(b) that the determination of such questions is necessary for the disposal of the case,

the Supreme Court may require the High Court to refer the questions to it for its decision.

(4) When a reference is made under clause (2) or clause (3), the High Court shall stay all proceedings in respect of the case until the Supreme Court decides the questions so referred.

(5) The Supreme Court shall, after giving the parties an opportunity of being heard, decide the questions so referred, and may—

(a) either dispose of the case itself; or

(b) return the case to the High Court together with a copy of its judgment on such questions for disposal of the case in conformity with such judgment by the High Court or, as the case may be, the court subordinate to it.”.

24. After article 139 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 139A.
Transfer of certain cases.

“139A. (1) If, on an application made by the Attorney-General of India, the Supreme Court is satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.”.

25. After article 144 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 144A.
Special provisions as to disposal of questions relating to Constitutional validity of laws.

“144A. (1) The minimum number of Judges of the Supreme Court who shall sit for the purpose of determining any question as to the constitutional validity of any Central law or State law shall be seven.

(2) A Central law or a State law shall not be declared to be constitutionally invalid by the Supreme Court unless a majority of not less than two-thirds of the Judges sitting for the purpose of determining the question as to the constitutional validity of such law hold it to be constitutionally invalid.”.

Amend-
ment of
article
145.

26. In article 145 of the Constitution,—

(a) in clause (1), after sub-clause (c), the following sub-clause shall be inserted, namely:—

“(cc) rules as to the proceedings in the Court under articles 131A and 139A;”;

(b) in clause (2), for the words, brackets and figure “provisions of clause (3)”, the words, figures, letter and brackets “provisions of article 144A and of clause (3)” shall be substituted;

(c) in clause (3), for the words “The minimum number”, the words, figures and letter “Subject to the provisions of article 144A, the minimum number” shall be substituted.

Substitu-
tion of
new arti-
cle for
article
150.

Form of
accounts
of the
Union
and of
the
States.

27. For article 150 of the Constitution, the following article shall be substituted, namely:—

“150. The accounts of the Union and of the States shall be kept in such form as the President may, after consultation with the Comptroller and Auditor-General of India, prescribe.”.

Amend-
ment of
article
166.

28. In article 166 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

“(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of the State.”.

Amend-
ment of
article
170.

29. In article 170 of the Constitution,—

(a) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

‘Explanation.—In this clause, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.’;

(b) in clause (3), after the proviso, the following provisos shall be inserted, namely:—

“Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.”.

30. (1) In article 172 of the Constitution, in clause (1), for the words “five years” in the two places where they occur, the words “six years” shall be substituted. Amendment of article 172.

(2) The amendments made by sub-section (1) shall apply to every Legislative Assembly in existence on the date of coming into force of this section.

31. In article 189 of the Constitution, clauses (3) and (4) shall be omitted. Amendment of article 189.

32. In article 191 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:— Amendment of article 191.

“(a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule as is declared by Parliament by law to disqualify its holder;”.

33. For article 192 of the Constitution, the following article shall be substituted, namely:— Substitution of new article for article 192.

“192. (1) If any question arises—

(a) as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, or

(b) as to whether a person found guilty of a corrupt practice at an election to a House of the Legislature of a State under any law made by Parliament shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification,

the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.”.

34. In article 194 of the Constitution, for clause (3), the following clause shall be substituted, namely:— Amendment of article 194.

“(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature shall be such as may from time to time be evolved by such House.”.

35. In article 208 of the Constitution, in clause (1), after the words “its procedure”, the brackets and words “(including the quorum to constitute a meeting of the House)” shall be inserted. Amendment of article 208.

Amend-
ment of
article
217.

36. In article 217 of the Constitution, in clause (2),—

- (a) in sub-clause (b), the word “or” shall be inserted at the end;
- (b) after sub-clause (b), the following sub-clause shall be inserted, namely:—

“(c) is, in the opinion of the President, a distinguished jurist.”;

(c) in the *Explanation*, in clause (a), for the words “has held judicial office”, the words “has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law” shall be substituted.

Amend-
ment of
article 225.

37. In article 225 of the Constitution, the proviso shall be omitted.

Sub-
stitution
of new
article for
article 226.

38. For article 226 of the Constitution, the following article shall be substituted, namely:—

Power of
High
Courts
to issue
certain
writs.

“226. (1) Notwithstanding anything in article 32 but subject to the provisions of article 131A and article 226A, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them,—

(a) for the enforcement of any of the rights conferred by the provisions of Part III; or

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in sub-clause (b) where such illegality has resulted in substantial failure of justice.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

(4) No interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) unless—

(a) copies of such petition and of all documents in support of the plea for such interim order are furnished to the party

against whom such petition is filed or proposed to be filed; and

(b) opportunity is given to such party to be heard in the matter.

(5) The High Court may dispense with the requirements of sub-clauses (a) and (b) of clause (4) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being caused to the petitioner which cannot be adequately compensated in money but any such interim order shall, if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order.

(6) Notwithstanding anything in clause (4) or clause (5), no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government.

(7) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

39. After article 226 of the Constitution, the following article shall be inserted, namely:—

"226A. Notwithstanding anything in article 226, the High Court shall not consider the constitutional validity of any Central law in any proceedings under that article."

Insertion of new article 226A.

Constitutional validity of Central laws not to be considered in proceedings under article 226.

Amendment of article 227.

40. In article 227 of the Constitution,—

(a) for clause (1), the following clause shall be substituted, namely:—

"(1) Every High Court shall have superintendence over all courts subject to its appellate jurisdiction.";

(b) after clause (4), the following clause shall be inserted, namely:—

"(5) Nothing in this article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

Amend-
ment
of
article
228.

41. In article 228 of the Constitution, for the words "it shall withdraw the case and may—", the words, figures and letter "it shall withdraw the case and, subject to the provisions of article 131A, may—" shall be substituted.

Inser-
tion of
new
article
228A.

42. After article 228 of the Constitution, the following article shall be inserted, namely:—

Special
provi-
sions
as to
dis-
posal
of
ques-
tions
relating
to Consti-
tutional
vali-
dity
of State
laws.

"228A. (1) No High Court shall have jurisdiction to declare any Central law to be constitutionally invalid.

(2) Subject to the provisions of article 131A, the High Court may determine questions as to the constitutional validity of State laws.

(3) The minimum number of Judges who shall sit for the purpose of determining any question as to the constitutional validity of any State law shall be five:

Provided that where the High Court consists of less than five Judges, all the Judges of the High Court may sit and determine such question.

(4) A State law shall not be declared to be constitutionally invalid by the High Court unless—

(a) where the High Court consists of five Judges or more, not less than two-thirds of the Judges sitting for the purpose of determining the validity of such law, hold it to be constitutionally invalid; and

(b) where the High Court consists of less than five Judges, all the Judges of the High Court hold it to be constitutionally invalid.

(5) The provisions of this article shall have effect notwithstanding anything contained in this Part.

Explanation.—In computing the number of Judges of a High Court for the purposes of this article, a Judge who is disqualified by reason of personal or pecuniary bias shall be excluded."

Inser-
tion of
new
article
257A.

43. After article 257 of the Constitution, the following article shall be inserted, namely:—

Assis-
tance
to
States by
deploy-
ment
of armed
forces or
other
forces of
the
Union.

"257A. (1) The Government of India may deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any State.

(2) Any armed force or other force or any contingent or unit thereof deployed under clause (1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence or control of the State Government or any officer or authority subordinate to the State Government.

(3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof deployed under clause (1) during the period of such deployment.”.

44. In article 311 of the Constitution, in clause (2),—

Amend-
ment
of
article
311.

(a) the words “and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry” shall be omitted;

(b) for the words “Provided that this clause shall not apply—”, the following shall be substituted, namely:—

“Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—”.

45. In article 312 of the Constitution,—

Amend-
ment of
article
312.

(a) in clause (1),—

(i) for the word and figures “Part XI”, the words and figures “Chapter VI of Part VI or Part XI” shall be substituted;

(ii) after the words “all-India services”, the brackets and words “(including an all-India judicial service)” shall be inserted;

(b) after clause (2), the following clauses shall be inserted, namely:—

“(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.”.

46. After Part XIV of the Constitution, the following Part shall be inserted, namely:—

Insertion of
new
Part
XIVA.

PART XIVA

TRIBUNALS

323A. (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the

Adminis-
trative
tribu-
nals.

territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Tribu-
nals
for
other
matters.

323B. (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:—

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the

extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

(g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

(h) offences against laws with respect to any of the matters specified in sub-clauses (a) to (g) and fees in respect of any of those matters;

(i) any matter incidental to any of the matters specified in sub-clauses (a) to (h).

(3) A law made under clause (1) may—

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, “appropriate Legislature”, in relation to any matter means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.

Amend-
ment of
article 330.

47. In article 330 of the Constitution, the following *Explanation* shall be inserted at the end, namely:—

Explanation.—In this article and in article 332, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.’

Amend-
ment of
article
352.

48. In article 352 of the Constitution,—

(a) in clause (1), after the words “make a declaration to that effect”, the following shall be inserted, namely:—

“in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation”;

(b) in clause (2), in sub-clause (a), after the word “revoked”, the words “or varied” shall be inserted;

(c) after clause (2), the following clause shall be inserted, namely:—

“(2A) Where a Proclamation issued under clause (1) is varied by a subsequent Proclamation, the provisions of clause (2) shall, so far as may be, apply in relation to such subsequent Proclamation as they apply in relation to a Proclamation issued under clause (1).”.

Amend-
ment of
article
353.

49. To article 353 of the Constitution, the following proviso shall be added, namely:—

“Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India,—

(i) the executive power of the Union to give directions under clause (a), and

(ii) the power of Parliament to make laws under clause (b), shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.”.

Amend-
ment
of
article
356.

50. In article 356 of the Constitution, in clause (4), for the words “six months” wherever they occur, the words “one year” shall be substituted.

Amend-
ment of
article 357.

51. (1) In article 357 of the Constitution, for clause (2), the following clause shall be substituted, namely:—

“(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.”.

(2) The amendment made by sub-section (1) shall apply to any law referred to in clause (2) of article 357 of the Constitution which is in force immediately before the coming into force of this section.

52. To article 358 of the Constitution, the following proviso shall be added, namely:—

Amend-
ment of
article
358.

“Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory specified in the First Schedule in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.”.

53. In article 359 of the Constitution,—

Amend-
ment
of
article 359.

(a) to clause (1A), the following proviso shall be added, namely:—

“Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory specified in the First Schedule in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.”;

(b) to clause (2), the following proviso shall be added, namely:—

“Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary.”.

54. In article 366 of the Constitution,—

Amend-
ment of
article
366.

(a) after clause (4), the following clause shall be inserted, namely:—

“(4A) “Central law” means any law other than a State law;”;

(b) after clause (26), the following clause shall be inserted, namely:—

“(26A) “State law” means—

(a) a State Act or an Act of the Legislature of a Union territory;

(b) an Ordinance promulgated by the Governor of a State under article 213 or by the administrator of a Union territory under article 239B;

(c) any provision with respect to a matter in the State List in a Central Act made before the commencement of this Constitution;

(d) any provision with respect to a matter in the State List or the Concurrent List in a Provincial Act;

(e) any notification, order, scheme, rule, regulation or bye-law or any other instrument having the force of law made under any Act, Ordinance or provisions referred to in sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (d); and

(f) any other law (including any usage or custom having the force of law) with respect to a matter in the State List.

Amendment
of
article
368.

55. In article 368 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

“(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-fourth Amendment) Act, 1976] shall be called in question in any court except upon the ground that it has not been made in accordance with the procedure laid down by this article.”.

Amendment of
article
371F.

56. In article 371F of the Constitution, in clause (c), for the words “five years”, the words “six years” shall be substituted and for the words “four years” in the two places where they occur, the words “five years” shall be substituted.

Amendment
of
the
Seventh
Schedule.

57. In the Seventh Schedule to the Constitution,—

(a) in List I—Union List, after entry 2, the following entry shall be inserted, namely:—

“2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.”;

(b) in List II—State List,—

(i) in entry 1, for the words “the use of naval, military or air forces or any other armed forces of the Union”, the words “the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof” shall be substituted;

(ii) for entry 2, the following entry shall be substituted, namely:—

“2. Police (including railway and village police) subject to the provisions of entry 2A of List I.”;

(iii) in entry 3, the words “Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court;” shall be omitted;

(iv) entries 11, 19, 20 and 29 shall be omitted;

(v) in entry 55, the words “and advertisements broadcast by radio or television” shall be inserted at the end;

(c) in List III—Concurrent List,—

(i) after entry 11, the following entry shall be inserted, namely:—

“11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.”;

(ii) after entry 17, the following entries shall be inserted, namely:—

“17A. Forests.

17B. Protection of wild animals and birds.”;

(iii) after entry 20, the following entry shall be inserted, namely:—

“20A. Population control and family planning.”;

(iv) for entry 25, the following entry shall be substituted, namely:—

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”;

(v) after entry 33, the following entry shall be inserted, namely:—

“33A. Weights and measures except establishment of standards.”.

58. (1) Notwithstanding anything contained in the Constitution, every petition made under article 226 of the Constitution before the appointed day and pending before any High Court immediately before that day (such petition being referred to in this section as a pending petition) and any interim order (whether by way of injunction or stay or in any other manner) made on or in any proceedings relating to, such petition before that day shall be dealt with in accordance with the provisions of article 226 as substituted by section 38.

Special
provi-
sions
as
to
pending
petitions
under
article
226.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), every pending petition before a High Court which would not have been admitted by the High Court under the provisions of article 226 as substituted by section 38 if such petition had been made after the appointed day, shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on or in any proceedings relating to, such petition shall stand vacated:

Provided that nothing contained in this sub-section shall affect the right of the petitioner to seek relief under any other law for the time being in force in respect of the matters to which such petition relates and in computing the period of limitation, if any, for seeking such relief, the period during which the proceedings relating to such petition were pending in the High Court shall be excluded.

(3) Every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day, on or in any proceedings relating to, a pending petition [not being a pending petition which has abated under sub-section (2)], and which is in force on that day, shall, unless before the appointed day copies of such pending petition and of documents in support of the plea for such interim order had been furnished to the party against whom such interim order was made and an opportunity had been given to such party to be heard in the matter, cease to have effect (if not vacated earlier),—

(a) on the expiry of a period of one month from the appointed day, if the copies of such pending petition and the documents in support of the plea for the interim order are not furnished to such party before the expiry of the said period of one month; or

(b) on the expiry of a period of four months from the appointed day, if the copies referred to in clause (a) have been furnished to such party within the period of one month referred to in that clause but such party has not been given an opportunity to be heard in the matter before the expiry of the said period of four months.

(4) Notwithstanding anything contained in sub-section (3), every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day on or in any proceedings relating to a pending petition [not being a pending petition which has abated under sub-section (2)], and which is in force on that day, shall, if such order has the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government, stand vacated.

Explanation.—In this section, “appointed day” means the date on which section 38 comes into force.

Power
of
the
Presi-
dent to
remove
difficul-
ties.

59. (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of the President's assent to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution, as appear to him to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy. The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some years now.

2. The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denial that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good.

3. It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. It is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with anti-national activities, whether by individuals or associations.

4. Parliament and the State Legislatures embody the will of the people and the essence of democracy is that the will of the people should prevail. Even though article 368 of the Constitution is clear and categorical with regard to the all inclusive nature of the amending power, it is considered necessary to put the matter beyond doubt. It is proposed to strengthen the presumption in favour of the constitutionality of legislation enacted by Parliament and State Legislatures by providing for a requirement as to the minimum number of Judges for determining questions as to the constitutionality of laws and for a special majority of not less than two-thirds for declaring any law to be constitutionally invalid. It is also proposed to take away the jurisdiction of High Courts with regard to determination of Constitutional validity of Central laws and confer exclusive jurisdiction in this behalf on the Supreme Court so as to avoid multiplicity of proceedings with regard to validity of the same Central law in different High Courts and the consequent possibility of the Central law being valid in one State and invalid in another State.

5. To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution. It is also necessary to make certain modifications in the writ jurisdiction of the High Courts under article 226.

6. It is proposed to avail of the present opportunity to make certain other amendments which have become necessary in the light of the working of the Constitution.

7. The various amendments proposed in the Bill have been explained in the notes on clauses.

8. The Bill seeks to achieve the above objects.

NEW DELHI;

H. R. GOKHALE.

The 28th August, 1976.

Notes on clauses

Clause 2.—The concepts of secularism, socialism and integrity of the Nation are implicit in the Constitution. These have been clearly spelt out in the amendments to the Preamble.

Clause 4.—Article 31C, as presently worded, saves only laws giving effect to the directive principles specified in clause (b) and clause (c) of article 39 from attack on the ground of infringement of fundamental rights contained in articles 14, 19 and 31. The amendment seeks to widen the scope of the article so as to cover all the directive principles enumerated in Part IV.

Clause 5.—This amendment provides for the making of a Parliamentary law to prevent or prohibit anti-national activities and to prevent or prohibit the formation of anti-national associations. The expressions 'anti-national activities' and 'anti-national associations' have been defined in detail. The law made by virtue of this amendment shall not be deemed to be void on the ground that it takes away or abridges any of the fundamental rights conferred by articles 14, 19 and 31.

Clause 6.—This clause seeks to insert a new article 32A to provide that the Supreme Court shall have no jurisdiction to decide the constitutional validity of a State law in any proceedings under article 32 unless the validity of a Central law is also in issue in such proceedings. The High Court will have no jurisdiction in such cases.

Clauses 7 to 10.—Article 39 is being amended to emphasize the constructive role of the State with regard to children.

New directives are being added in Part IV to provide for—

- (1) free legal aid to economically backward classes;
- (2) participation of workers in the management of organisations engaged in any industry;
- (3) protection and improvement of environment and safeguarding of forests and wild life.

Clause 11.—The Constitution does not contain any provisions specifying the fundamental duties of the citizens. New Part IV-A proposed in this clause enumerates these fundamental duties.

Clause 13.—The President acts on the advice of the Council of Ministers. It is being made explicit by this amendment that he shall be bound by such advice.

Clauses 14 and 28.—Article 77(3) provides for the framing of rules for the convenient transaction of Government business which rules are treated by the Government as confidential. However, as courts have been found to summon these rules for production, it is considered that this should be prevented. A new clause is, therefore, being added to provide that no court or authority shall compel their production.

A similar provision is being made in article 166.

Clauses 12, 15, 16, 29 and 47.—In the context of the intensification of the family planning programmes of the Government, it is considered that not only the allocation of seats in the House of the People to the States and the total number of seats in Legislative Assemblies of the States but also the extent of parliamentary and assembly constituencies and the reservation of seats for Scheduled Castes and Scheduled Tribes as determined on the basis of the 1971 census, should be frozen till the year 2001. It is accordingly proposed to amend the relevant articles, namely, articles 81 and 82 relating to the Lok Sabha, article 170 relating to the Legislative Assemblies of States, article 55 relating to the manner of election of the President and articles 330 and 332 relating to reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha and the Legislative Assemblies of States. Provision is also being made to the effect that whenever after a census, delimitation is undertaken, such delimitation is to take effect from the date to be specified by the President.

Clauses 17, 30 and 56.—It is proposed to change the duration of the Lok Sabha and the State Legislative Assemblies from five to six years. A consequential amendment is made in article 371F(c) relating to Sikkim Legislative Assembly.

Clauses 18, 22, 31 and 35.—Presently under article 100 the quorum for constituting a meeting of either House of Parliament is one-tenth of the total number of members. This provision can only be altered by a Parliamentary law. The relevant provisions are proposed to be omitted from article 100 and power is being taken to do it by means of rules under article 118. Similar provisions are being made in relation to the State Legislatures by amending articles 189 and 208.

Clauses 19 and 32.—Sub-clause (a) of clause (1) of article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds an office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The existing position has led to a great deal of uncertainty. The sub-clause is sought to be amended to provide that a person shall be so disqualified if he holds any such office of profit under the Government of India or the Government of any State as is declared by Parliament by law to disqualify its holder.

Similar provision is being made in article 191(1)(a) relating to State Legislatures but the power to specify the offices will vest in Parliament instead of in the State Legislature.

Clauses 20 and 33.—The amendment proposed in clause 20 enlarges the scope of article 103. The question as to whether a member has

become subject to any disqualification mentioned in clause (1) of article 102 as also the question whether a person is disqualified for being chosen as a member of either House of Parliament, etc., on the ground of being found guilty of a corrupt practice, including the question as to the period of disqualification or as to the removal or the reduction of the period of such disqualification, shall be decided by the President after consulting the Election Commission which is empowered to hold an inquiry in this behalf. It is proposed to amend article 192 on similar lines.

Clauses 21 and 34.—This clause seeks to amend clause (3) of article 105 which provides that the powers, privileges and immunities of each House of Parliament and of its members and committees thereof shall be those of the House of Commons or of its members and committees until they are defined by a Parliamentary law. The amendment proposed is that the powers, privileges and immunities aforesaid of either House of Parliament and of the members and the committees thereof shall be evolved by such House from time to time. A similar modification is being made in clause (3) of article 194 which relates to State Legislatures.

Clauses 23, 24 and 25.—Presently, the Constitutional validity of a Central law can be questioned either before the Supreme Court or the High Court. This scheme is being altered as it is felt that if a number of High Courts give differing judgments as regards the validity of a Central law, the implementation of the Central law will become difficult. It is, therefore, proposed to invest the Supreme Court with exclusive jurisdiction as regards determination of the constitutional validity of Central laws. Where a case involves constitutional validity of both a Central and a State law, the Supreme Court alone will have jurisdiction to determine the constitutional validity of such laws. Where cases involving the same or substantially the same questions of law of general importance are pending before the Supreme Court and one or more High Courts or before two or more High Courts the Attorney-General can move the Supreme Court to withdraw the cases pending before the High Court or High Courts to itself and dispose of the same. Further, the Supreme Court is being empowered to transfer cases from one High Court to another High Court if it is expedient for the ends of justice so to do.

It is also being provided that the minimum number of Judges of the Supreme Court who shall sit for determining any question as to the constitutional validity of a Central law or of a Central and a State law shall be not less than seven and that a Central or State law shall not be declared to be constitutionally invalid unless not less than two-thirds of the Judges hearing the case hold the same to be constitutionally invalid.

Clause 26.—This amendment makes some consequential changes in article 145 following the insertion of new articles 131A, 139A and 144A.

Clause 27.—At present the Comptroller and Auditor-General has the power to prescribe the form in which the accounts of the Union and of the States shall be maintained. Consequent on the decision of Government to separate the accounts from audit, this power is being given to the President, to be exercised after consultation with the Comptroller by amending article 150.

Clause 36.—This amendment relates to the qualifications to be fulfilled by a person for appointment as a High Court Judge. Sub-clause (b) of clause (2) of article 217 is being amended to provide that a distinguished jurist is also qualified for appointment as a High Court Judge. This amendment also provides that hereafter the period spent by a person, after he became an advocate, as a member of a Tribunal or as the incumbent of any post, under the Union or a State, requiring special knowledge in law shall be taken into account for the purpose of computing the period during which such person has been an advocate.

Clause 37.—This is a consequential amendment of article 225 following insertion of new article 323B which provides for the exclusion of the jurisdiction of the High Courts and the Supreme Court (except the jurisdiction under article 136) and for the setting up of tribunals, in respect of certain specified matters including matters concerning the revenue.

Clauses 38 and 58.—Clause 38 seeks to amend article 226 to a significant extent. While the High Courts continue to enjoy their power to enforce fundamental rights, they cannot hereafter exercise jurisdiction in every case where there is an invasion of a legal right which, so far, they have been doing by virtue of the jurisdiction conferred by the expression 'for any other purpose' which is being deleted now. Instead, the High Courts are being vested with a restricted jurisdiction. They can exercise jurisdiction in (a) cases where there is a contravention of a statutory provision causing substantial injury to the petitioner, and (b) cases where there is an illegality resulting in substantial failure of justice. In either case, the petitioner has to satisfy the court that he has no other remedy.

Provision is being made under clause 38 that the High Courts shall not issue an interim order ordinarily except upon notice to the other side and after giving the other side an opportunity to be heard. An exception is made in cases where the loss or damage to the petitioner cannot be compensated in money. Notwithstanding this exception, the High Courts shall have no power to grant an interim order in any case where the effect of such order is to delay any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work/project of public utility, etc.

Provision is also being made in clause 58 to cover petitions pending in the High Courts.

Clauses 39 and 42.—These amendments seek to exclude from the jurisdiction of High Courts questions as to constitutional validity of Central laws and provide for the minimum number of Judges of a High Court who shall sit for determining any questions as to the constitutional validity of a State law. The minimum number is fixed at five but where a High Court consists of less than five Judges, all the Judges of the High Court sitting together can hear such questions. Any Judge disqualified by reason of pecuniary or personal bias has to be excluded in computing the number of Judges of a High Court. Where the number of Judges hearing a question as to the constitutional validity is not less than five, the decision as to constitutional invalidity shall be by

a majority of not less than two-thirds and where the number of Judges is less than five, the law in issue cannot be declared to be constitutionally invalid unless all the Judges hold it to be constitutionally invalid.

Clause 40.—This clause seeks to amend article 227 to omit the reference to tribunals occurring in clause (1) of the article and make it clear that nothing in that article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

Clause 41.—This amendment is consequential to the insertion of new article 131A.

Clause 43.—By this amendment a new article 257A is inserted to empower the Union to send any armed force or other force of the Union for dealing with any grave situation of law and order in any State. Such force shall act in accordance with the directions of the Central Government and shall not be subject to the control of the State Government. Provision is also being made to empower Parliament to define the powers, functions and the liabilities of the members of such force.

Clause 44.—This clause seeks to amend article 311(2) denying the Government servant the opportunity to make a representation at the second stage of the inquiry against the penalty proposed to be imposed on him.

Clause 45.—This clause seeks to amend article 312 of the Constitution relating to all-India Services to provide for the creation of an all-India Judicial Service by a Parliamentary law. Such Service shall not include any post inferior to that of a district judge.

Clause 46.—This clause seeks to insert a new Part XIVA, which consists of articles 323A and 323B. The former provides for the setting up of Administrative Tribunals by a Parliamentary law for determining disputes relating to the recruitment and conditions of service of Union Government servants and servants of the State including the employees of any local or other authority within the territory of India or under the control of the Government of India or of a corporation owned or controlled by the Government. Such law will provide for the constitution of a tribunal for the Union and for a separate tribunal for each State or for two or more States and define the jurisdiction and powers of such tribunals.

New article 323B provides for the creation of tribunals for the determination of disputes, complaints and offences respecting the various matters specified therein.

Clauses 48, 49, 52 and 53.—At present, a Proclamation of Emergency cannot be made in respect of a part of the country. The amendments proposed in these clauses are for enabling the President to make a Proclamation of Emergency in respect of a part of the country or, as the case may be, to restrict a Proclamation of Emergency made in respect of the country as a whole to a part of the country.

Clauses 50 and 51.—Under the existing article 356, a Proclamation approved by Parliament ceases to be in operation after a period of six months unless revoked earlier and can be renewed for a period of six months at a time but in no case beyond a total period of three years. The period of six months is now being enlarged to one year. Clause (2) of article 357 is being substituted by a new clause to the effect that any law made by Parliament or the President or any other authority in exercise of the powers of the State Legislature under article 356 shall continue in force until altered, repealed or amended by the competent Legislature or other authority.

Clause 54.—By this amendment, the expressions 'Central law' and 'State law' are being defined. This has become necessary because of the division of jurisdiction between the Supreme Court and the High Courts as regards the determination of the Constitutional validity of Central and State laws.

Clause 55.—This clause seeks to amend article 368 to clarify the true scope of that article.

Clause 57.—The amendments made by this clause seek either to amend the existing entries in the lists of the Seventh Schedule or to transpose certain entries or subjects in certain entries from one List to another. The entries or subjects which have been transposed from List II to List III are (1) administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts (2) education (3) weights and measures (4) forests and (5) protection of wild animals and birds. It is also proposed that taxes on advertisements broadcast by radio or television should be excluded from the purview of entry 55 of the State List.

Clause 59.—This clause provides for the removal of difficulties.

S. L. SHAKDHER,
Secretary-General.